

1 HONORABLE JAMAL N. WHITEHEAD  
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9 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

10 VALVE CORPORATION,

11 Plaintiff,

12 v.

13 GREGORY FISH,

14 Defendant.

Case No. 2:24-cv-1717-JNW

DEFENDANT GREGORY FISH'S REPLY  
TO HIS MOTION TO CONFIRM  
ARBITRATION AWARD

15 Defendant Gregory Fish (“**Mr. Fish**”), through undersigned counsel, hereby  
16 replies to Plaintiff Valve Corporation’s (“**Valve**”) response to Mr. Fish’s motion to  
17 confirm award.  
18

19 In short, none of Valve’s arguments approach the high bar required for the  
20 relief it seeks. The Court should therefore grant Mr. Fish’s motion to confirm the  
21 award.  
22

23 **I. LEGAL STANDARD**

24 Under Section 9 of the Federal Arbitration Act, the Court must confirm an  
25 arbitration award unless it is vacated, modified, or corrected as prescribed in §§ 10  
26 or 11. *Hall St. Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 1402 (2008). The statute’s

1 command is mandatory: confirmation follows unless Congress has said otherwise.  
 2 Judicial review of an arbitration award is “limited and highly deferential.” *Haines*  
 3 *v. Amazon.com Servs.*, 766 F. Supp. 3d 1120, 1124 (W.D. Wash. 2025). Legal or  
 4 factual mistakes alone do not justify setting an award aside. *Id.* The party opposing  
 5 confirmation bears the burden of proof. *Shazor Logistics, LLC v. Amazon.com*, No.  
 6 24-CV-968-BJR, 2024 WL 4827533, at \*3 (W.D. Wash. Nov. 19, 2024).

## 8 II. ARGUMENT

### 9 A. The Parties Agreed to Arbitrate Mr. Fish’s Antitrust Claims

10 Valve now claims the parties never agreed to arbitrate. Yet in its own  
 11 complaint, Valve alleged that “in 2012, Valve added to the [parties’ agreement] an  
 12 arbitration agreement providing that, with limited exceptions, users and Valve  
 13 ‘agree to resolve all disputes and claims between us in individual binding  
 14 arbitration’ with the AAA.” Dkt. 78 ¶ 58. Valve’s clear about-face reflects not  
 15 confusion but convenience.<sup>1</sup>

16 Whatever Valve’s current position on its “new” agreement, it does not  
 17 matter. This Court already ordered that all issues—including arbitrability—be  
 18 decided by the arbitrator. *Wolfire Games, LLC v. Valve Corp.*, No 2:21-cv-00563-  
 19 JCC, 2021 WL 4952220, at \*1 (W.D. Wash. Oct. 25, 2021). The arbitrator did exactly

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 22  
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 24  
 25     <sup>1</sup> The Court should consider “advis[ing] counsel to read Rule 3.3 of the  
 26 Washington Rules of Professional Conduct (regarding candor toward the tribunal),  
 with which the Local Civil Rules of the Western District of Washington require  
 attorneys to comply.” *Travelers Prop. Cas. Co. of Am. v. AF Evans Co.*, No. C10-  
 1110-JCC, 2012 WL 12882902, at \*4 (W.D. Wash. Dec. 11, 2012).

1 that and ruled for Mr. Fish. Under this Court’s prior order and the FAA’s highly  
 2 deferential standard, the award must be confirmed.  
 3

4 **B. Valve Wasn’t Denied Due Process**

5 Petitioner next invokes Section 10(a)(3) of the FAA, which permits vacatur  
 6 where an arbitrator “refuse[s] to hear evidence pertinent and material to the  
 7 controversy” or otherwise engages in “misbehavior by which the rights of any party  
 8 have been prejudiced.” 9 U.S.C. § 10(a)(3). But there is no allegation that the  
 9 arbitrator refused to hear evidence. Instead, Valve complains that the arbitrator  
 10 reviewed backup documentation supporting Respondent’s cost application *in*  
 11 *camera*. Dkt. 99 at 6–9.

12       Valve cites no authority holding that this practice is improper. It relies  
 13 instead on a patchwork of cases taken out of context to construct a strained  
 14 argument. The law is clear: an arbitrator’s procedural choices are not governed by  
 15 the Federal Rules of Civil Procedure or Evidence. The Ninth Circuit has “repeatedly  
 16 held that arbitration is not governed by the federal courts’ strict procedural and  
 17 evidentiary requirements,” and courts must be “mindful not to impose” those  
 18 requirements on arbitration proceedings. *Astronics Elec. Sys. Corp. v. MAGicALL,*  
 19 *Inc.*, No. 22-35645, 2023 WL 3451682, at \*1 (9th Cir. May 15, 2023) (quoting *U.S.*  
 20 *Life Ins. Co. v. Superior Nat'l Ins. Co.*, 591 F.3d 1167, 1173 (9th Cir. 2010)).  
 21

22       The cases Valve invokes do not say otherwise. In *Move, Inc. v. Citigroup*  
 23 *Global Markets, Inc.*, 840 F.3d 1152 (9th Cir. 2016), the issue was whether an award  
 24 should be vacated after it was revealed that the tribunal’s chairperson was a conman

1 impersonating a retired lawyer. Its mention of *ex parte* evidence is dicta, drawn from  
 2 *Totem Marine Tug & Barge, Inc. v. N. Am. Towing, Inc.*, 607 F.2d 649 (5th Cir.  
 3 1979), a 50-year-old case involving a gross due-process violation. There, an  
 4 arbitrator telephoned one party's counsel to obtain a damages figure and used that  
 5 figure in the award—without notice to or input from the opposing side. *Id.* at 650.  
 6 That conduct bears no resemblance to what happened here.

7 Valve's claim of an "*ex parte*" proceeding here reduces to the arbitrator's *in*  
 8 *camera* review of privileged cost records supporting Mr. Fish's application. Dkt. 99  
 9 at 8. There were no undisclosed communications between the arbitrator and  
 10 counsel—no off-record exchanges, no secret adoption of a party's position. The  
 11 arbitrator merely reviewed confidential materials to verify a cost submission.

12 Valve's reliance on *Yamada v. Nobel Biocare Holding AG*, 825 F.3d 536 (9th  
 13 Cir. 2016), is equally misplaced. Yamada concerned judicial fee awards in federal  
 14 class actions, not arbitration. Valve identifies no authority extending that standard  
 15 to arbitrations, and for good reason. Arbitration is intentionally flexible,  
 16 unencumbered by "the federal courts' strict procedural and evidentiary  
 17 requirements." *Astronics*, 2023 WL 3451682, at \*1. Even if Yamada applied, the  
 18 result would be the same: that case recognizes that a court—or here, an arbitrator—  
 19 may rely on summary information rather than time sheets so long as the opposing  
 20 party has a fair opportunity to respond. *Yamada*, 825 F.3d at 544 n.7. Respondent  
 21 did exactly that.

1 Valve also misreads Rule R-32(b) of the AAA Consumer Arbitration Rules.  
 2 Nothing in that rule forbids an arbitrator from reviewing evidence in camera. It  
 3 provides only that “[a]ll evidence shall be taken in the presence of the arbitrator and  
 4 all of the parties unless any of the parties is absent, in default, or has waived the  
 5 right to be present.” That provision addresses live testimony, not documentary  
 6 submissions. The relevant portion—R-32(c)—instead directs arbitrators to “consider  
 7 applicable principles of legal privilege,” which is precisely what the arbitrator did  
 8 by protecting counsel’s privileged timekeeping records.

9  
 10 Even if Valve could show some technical misstep, that would not warrant  
 11 vacatur. The Ninth Circuit holds that vacatur is proper under Section 10(a)(3) only  
 12 when an arbitrator’s conduct deprives a party of a “fair hearing.” *Riley v.*  
 13 *QuantumScape Corp.*, No. 23-15277, 2024 WL 885034, at \*2 (9th Cir. Mar. 1, 2024)  
 14 (quoting *U.S. Life Ins.*, 591 F.3d at 1177). A fair hearing requires notice, an  
 15 opportunity to be heard and to present relevant evidence, and an impartial  
 16 decisionmaker. *Id.* Valve had all three. It received notice, participated fully,  
 17 presented evidence, and was heard throughout. That is the essence of due process—  
 18 and it is exactly what it received.

19  
 20 **C. The Award Was Rational, Not Arbitrary**

21  
 22 Valve claims the arbitrator’s award was irrational and arbitrary, warranting  
 23 vacatur under § 10(a)(4) of the FAA. The Ninth Circuit has made clear that § 10(a)(4)  
 24 sets a high bar—it is not enough to show that the arbitrator erred, or even seriously  
 25 erred. *Lagstein v. Certain Underwriters at Lloyd’s, London*, 607 F.3d 634, 641 (9th  
 26

1 Cir. 2010) (citing *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 671  
 2 (2010)). Vacatur is proper only if the award is “completely irrational” or shows a  
 3 “manifest disregard for the law.” *ShaZor Logistics*, 2024 WL 4827533, at \*3 (quoting  
 4 *Kyocera Corp. v. Prudential-Bache Trade Servs., Inc.*, 341 F.3d 987, 997–98 (9th Cir.  
 5 2003)).

7 Valve has not come close to meeting that standard; the award is reasoned,  
 8 cites controlling law, and rests on ample evidence.

9 Valve’s only arguably relevant citation is *Briscoe Protective, LLC v. N. Fork*  
 10 *Surgery Ctr., LLC*, 215 A.D.3d 956, 957–58, 188 N.Y.S.3d 113 (2023). There, a New  
 11 York appellate court vacated an award after finding that the arbitrator granted  
 12 attorneys’ fees without any proof of hours worked or hourly rates—awarding fifty  
 13 percent of the damages as fees with no record support. *Id.* That decision turned on  
 14 the absence of any evidence whatsoever, not a misapplication of law.

15 Here, by contrast, there is no allegation that the arbitrator failed to request  
 16 or review evidence supporting the fee award. To the contrary, Valve requested  
 17 production of Mr. Fish’s billing records, and the arbitrator granted that request—  
 18 reviewing the materials *in camera* before issuing a reasoned decision. Valve cannot  
 19 now complain about the very process it demanded and received.

20 *Briscoe Protective* also applied New York’s domestic arbitration statute, N.Y.  
 21 C.P.L.R. Art. 75, not the FAA. Under the FAA, the Ninth Circuit has emphasized  
 22 that “neither erroneous legal conclusions nor unsubstantiated factual findings  
 23 justify federal court review of an arbitral award.” *Ghayoori v. Cobra Trading, Inc.*,

1 No. C25-0021 TSZ, 2025 WL 1519136, at \*3 (W.D. Wash. May 28, 2025) (quoting  
 2 *Kyocera*, 341 F.3d at 994). So even if *Briscoe Protective* were on point, it would not  
 3 justify vacatur here.  
 4

5 At most, Valve’s objections reduce to claims of legal error—which cannot  
 6 sustain vacatur under § 10(a)(4). The Ninth Circuit requires far more: “the moving  
 7 party must show that the arbitrator understood and correctly stated the law, but  
 8 proceeded to disregard the same.” *Bosack v. Soward*, 586 F.3d 1096, 1104 (9th Cir.  
 9 2009) (cleaned up). Valve makes no such showing. The record reveals a careful and  
 10 reasoned decision, not a disregard for law or logic.  
 11

12 In sum, the award was reasoned, supported, and lawful. Nothing about it  
 13 was arbitrary, much less capricious.  
 14

#### **D. No Conflict Existed Between the Arbitrator and the Parties**

15 Valve claims that the arbitrator failed to disclose conflicts of interest in  
 16 violation of 9 U.S.C. § 10(a)(2). That claim fails at the threshold.  
 17

18 Valve asserts that the arbitrator’s firm “UBG represents multiple video  
 19 game developers or their affiliates who are class members adverse to Valve in a  
 20 certified federal antitrust class action currently pending in this Court.” Dkt. 99 at  
 21 11. Valve cites no authority suggesting that such a tenuous link creates a disclosable  
 22 conflict; the cases it invokes underscore the opposite—what a real conflict looks like.  
 23 In *Carnegie Cos. v. Summit Props., Inc.*, 183 Ohio App. 3d 770 (2009), the same law  
 24 firm represented both sides of the same deal. In *Schmitz v. Zilveti*, 20 F.3d 1043,  
 25 1049 (9th Cir. 1994), the arbitrator’s firm had previously represented one of the  
 26

1 parties' owners. And in *HSMV Corp. v. ADI Ltd.*, 72 F. Supp. 2d 1122, 1132 (C.D.  
 2 Cal. 1999), the arbitrator's firm directly represented a party's owner.  
 3

4       Here, there is nothing of the sort. Valve points to no evidence that the  
 5 arbitrator or her firm ever represented a party adverse to Valve. Nor could it.  
 6 Expecting the arbitrator to search every client of her firm to see whether any might,  
 7 somewhere, be adverse to Valve in unrelated litigation is not the law—and not  
 8 remotely practical. The law requires disclosure of real conflicts, not imagined ones.  
 9

10     Absent class members, as opposed to named parties, are definitionally not  
 11 even *considered* when analyzing conflicts. In *E. & J. Gallo Winery v. EnCana Energy*  
 12 *Services, Inc.*, the defendant moved to disqualify the judge because the judge was a  
 13 possible absent class member in a Nevada class action against the defendant that  
 14 alleged similar facts. No. CV F 03-5412 AWI LJO, 2004 WL 7342771 (E.D. Cal. Mar.  
 15 29, 2004). The request was denied, and the judge held that any:  
 16

17       “interest as I may be perceived to have in this case is predicated on the notion  
 18 I may make a decision in the present case that may, in some unknown way,  
 19 influence a case in which I may eventually become a member (or may opt  
 20 out) of an as yet uncertified class, and from which I may or may not receive  
 21 some financial benefit whose amount and nature are as yet unknown from  
 22 one or more defendants who may or may not be the defendant in this case.”  
 23

24     *Id.* at \*4.

25     Even if a conflict existed, Valve never raised it during the arbitration. The  
 26 Ninth Circuit has long held that “the waiver doctrine applies where a party to an  
 arbitration has [actual or] constructive knowledge of a potential conflict but fails to  
 timely object.” *Fid. Fed. Bank, FSB v. Durga Ma Corp.*, 386 F.3d 1306, 1313 (9th

1 Cir. 2004); *see also Div. 15 Tech. v. Sheet Metal Workers' Int'l Ass'n, Local 104*, No.  
 2 C 10-05309 JSW, 2011 WL 13244832, at \*5 (N.D. Cal. Mar. 14, 2011) (party waived  
 3 objection to partiality by failing to object during arbitration). This rule serves a vital  
 4 purpose: it prevents parties from pocketing objections as insurance against an  
 5 adverse award and then weaponizing an arbitrator's neutrality after losing.

### 7 III. CONCLUSION

8 For the above reasons, PC Gamers respectfully request that the Court reject  
 9 Steam's request for extraordinary relief and deny its motion for a preliminary  
 10 injunction.

12 DATED this 7th day of October, 2025.

13 BAILEY DUQUETTE P.C.

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28 *I certify that this motion contains less than 2,100 words pursuant to Local Rules W.D.  
 Wash. LCR 7(e)(4).*

## **CERTIFICATE OF SERVICE**

I hereby certify that on this date, I caused a true and correct copy of the foregoing Defendant Gregory Fish's Reply to His Motion to Confirm Arbitration Award served upon counsel of record herein, as follows:

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated: October 7, 2025 at Seattle, Washington.

s/ William R. Burnside  
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